

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 OZONE INTERNATIONAL, LLC,
11 Plaintiff,
12 v.
13 WHEATSHEAF GROUP LIMITED, a
14 foreign private limited company
15 registered in England and Wales,
16 Defendant.

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No. 2:19-cv-01108-RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on two motions filed by Plaintiff Ozone International, LLC (“Plaintiff”): (1) a motion to continue the case schedule, Dkt. # 90, or in the alternative, to stay all discovery pending the Court’s ruling on all outstanding motions, Dkt. # 98, and (2) a motion to appoint a discovery master or compel discovery, Dkt. # 92. On April 30, the Court held a phone conference with the parties to discuss the motions. For the reasons stated below, the Court **GRANTS** both motions.

II. LEGAL STANDARDS

Pursuant to Federal Rule of Civil Procedure 16(b)(4), a case schedule “may be modified only for good cause and with the judge’s consent.” A finding of good cause

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1 requires a showing of diligence. “If [the] party was not diligent, the inquiry should end.”
2 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

3 Under Rule 53 of the Federal Rules of Civil Procedure, a court may appoint a
4 special master to “address pretrial or posttrial matters that cannot be effectively and
5 timely addressed by an available district judge or magistrate judge of the district.” Fed.
6 R. Civ. P. 53(a)(1)(c). “Masters may . . . be appointed because of the complexity of
7 litigation and problems associated with compliance with the district court order.” *United*
8 *States v. Suquamish Indian Tribe*, 901 F.2d 772, 775 (9th Cir. 1990).

9 **III. DISCUSSION**

10 The discovery deadline in this case is April 30, 2021. Plaintiff served its first
11 requests in September 2019. Dkt. # 92 at 4. Defendant declined to engage in discovery
12 and moved the Court to stay discovery pending the outcome of Defendant’s first
13 summary judgment motion. *Id.* On May 6, 2020, the Court denied Defendant’s request
14 for summary judgment and a stay in discovery, ordering “a reasonable amount of
15 discovery.” Dkt. # 37 at 7. Since that time, Plaintiff alleges that discovery has been
16 repeatedly thwarted by Defendant through objections and deficient responses to
17 discovery requests. Dkt. # 92 at 4. Defendant responds that Plaintiff, in fact, has delayed
18 discovery through repetitive requests for duplicative, overboard, and “abusive” discovery
19 requests, “only to withdraw or abandon such discovery at the last minute in the face of a
20 threatened motion for protective order.” Dkt. # 95 at 4.

21 In support of its request to continue the case schedule, Plaintiff alleges that
22 Defendant anticipated all document production to be completed by January 15, 2021,
23 pursuant to an agreement made with Defendant. Dkt. # 90 at 4. According to Plaintiff,
24 Defendant later changed its position and pushed back the final date of production from
25 January 15 to April 15, 2021 and also walked back on its production agreements. *Id.* at 5.
26 Defendant, meanwhile, claimed that it was Plaintiff that had backtracked from its original
27 deadline, setting April 15, 2021 as a new deadline. Dkt. # 95 at 12. Based on this

1 delayed production date, Plaintiff requests a four-month extension to the case schedule so
2 that it “has a reasonable opportunity to review [the documents that Defendant agreed to
3 provide on April 15, 2021], resolve any remaining discovery disputes . . . and move
4 forward with depositions.” Dkt. # 90 at 2-3.

5 The discovery process over the preceding months has been contentious, to say the
6 least, fraught with disputes over which documents need to be produced, when they will
7 be produced, and whether they can be reviewed sufficiently prior to the current deadlines.
8 See Dkt. # 90 at 3-6; Dkt. # 95 at 12. Despite ongoing communication between the
9 parties over the course of months, the parties have failed to reconcile their disputes. See
10 e.g. Dkt. ## 91-1, 91-4, 91-7. The Court has already had to intervene to resolve one
11 dispute—out of the many outstanding—regarding whether Defendant was permitted to
12 review Plaintiff’s emails, which was a matter that should have been resolved between the
13 parties. See Dkt. # 88. The voluminous caseload before this Court precludes it from
14 intervening to resolve the numerous outstanding disputes.

15 Given the continued failure of the parties to resolve their discovery disputes, the
16 Court finds that the appointment of a master of discovery pursuant to Rule 53 is both
17 appropriate and necessary to assist in resolving outstanding disputes and ensuring that
18 discovery can move forward expeditiously. The Court also finds that Plaintiff has
19 demonstrated diligence in seeking discovery and has engaged Defendant numerous times
20 in its effort to obtain discovery. See Dkt. # 98 at 5-6. The Court notes that this is
21 Plaintiff’s second request to appoint a discovery master. Dkt. # 69. The Court therefore
22 finds good cause to continue the case for four months.

23 IV. CONCLUSION

24 It is hereby ORDERED as follows:

25 1. Plaintiff’s motion to appoint a discovery master is **GRANTED**. Dkt. # 92.
26 The Honorable John P. Erlick is appointed by this Court to serve as discovery master in
27 this matter. Costs will be shared equally by the parties.

1 2. Plaintiff's motion to continue the case schedule by four months is **GRANTED**.

2 Dkt. # 90. The case schedule is amended as follows:

Case Event	Deadline
Deadline to complete fact discovery	August 31, 2021
Deadline for Exchanging Initial Expert Witness Disclosures/Reports Under FRCP 26(a)(2)	September 14, 2021
Deadline for Exchanging Rebuttal Expert Witness Disclosures/Reports Under FRCP 26(a)(2)	October 11, 2021
Deadline to complete expert discovery	October 26, 2021
Deadline for filing dispositive motions	November 19, 2021
Deadline for filing motions <i>in limine</i> and motions challenging expert witness testimony	January 13, 2022
Agreed Pretrial Order due	January 26, 2022
Trial briefs, deposition designations, and trial exhibits due	February 4, 2022
Bench Trial Date	February 14, 2022

18 19 DATED this 30th day of April, 2021.

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22 23 The Honorable Richard A. Jones
24 25 United States District Judge
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